

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,) Criminal
Government,) No. 19-286 (AMD)
vs.) ARRAIGNMENT
ROBERT S. KELLY,) Brooklyn, New York
Defendant.) Date: August 2, 2019
Time: 10:30 a.m.

TRANSCRIPT OF ARRAIGNMENT
HELD BEFORE
THE HONORABLE MAGISTRATE JUDGE STEVEN L. TISCIONE
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

For the Government: Elizabeth Geddes, AUSA
Maria Cruz Melendez, AUSA
Nadia Shihata, AUSA
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(Appearances continued on the next page)

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Annette M. Montalvo, CSR, RDR, CRR
Official Court Reporter

1 APPEARANCES: (Continued)

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6 -and-

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11
12 ALSO PRESENT: Amina Adossa-Ali, US Pretrial Services
Kathy Rodriguez, US Pretrial Services
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17 Proceedings reported by machine shorthand, transcript produced
18 by computer-aided transcription.

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Annette M. Montalvo, CSR, RDR, CRR
Official Court Reporter

1 (WHEREUPON, commencing at 10:33 a.m., the following
2 proceedings were had in open court, to wit:)

3 THE COURTROOM DEPUTY: Criminal cause for
4 arraignment, Case No. 19-CR-286, *United States of America v.*
5 *Robert Sylvester Kelly*.

6 Counsel, your names for the record.

7 MS. GEDDES: Elizabeth Geddes, Nadia Shihata, Maria
8 Cruz Melendez, and Kyra Wenthen, for the government. Good
9 morning, Your Honor.

10 THE COURT: Morning.

11 MR. ANTON: Good morning, Your Honor. Douglas
12 Anton, Hackensack, New Jersey, on behalf of Mr. Kelly.

13 MR. GREENBERG: Good morning, Your Honor. Steve
14 Greenberg on behalf of Mr. Kelly.

15 MR. LEONARD: Good morning, Judge. Mike Leonard on
16 behalf of Mr. Kelly.

17 THE COURT: Good morning.

18 Good morning, Mr. Kelly.

19 THE DEFENDANT: Good morning.

20 THE COURT: All right. The purpose of the
21 proceeding is to make sure you understand the charges that
22 have been brought against you, to advise you of certain rights
23 that you have, and to address the questions of whether you can
24 be released on bail.

25 First, you have the right to an attorney in this

1 case. If you cannot afford an attorney, the court will
2 provide one to you at no cost.

3 I assume you are all retained counsel in this case.

4 MR. ANTON: Yes.

5 MR. GREENBERG: Yes.

6 MR. LEONARD: Yes.

7 THE COURT: You have the right to remain silent.

8 You are not required to make any statements. If you have made
9 any prior statements, you need not say any more.

10 If you decide to make a statement, you can stop at
11 any time. But any statements you do make, aside from
12 statements you make to your attorney, can be used against you.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. The grand jury in this
16 district has returned a superseding indictment against you.
17 Have you seen a copy of that, sir?

18 THE DEFENDANT: Yes.

19 THE COURT: Counsel, does your client waive a public
20 reading of the indictment?

21 MR. ANTON: Yes, Judge.

22 THE COURT: And is he prepared to enter a plea at
23 this time?

24 MR. ANTON: Plead not guilty at this time, Judge.

25 THE COURT: All right.

1 MS. GEDDES: Your Honor, there's also an underlying
2 indictment that the defendant should be arraigned on as well.

3 THE COURT: Okay. Have you seen a copy of the
4 original indictment that was filed in this case?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. And how does your client
7 plead to those charges?

8 MR. ANTON: Not guilty, Judge.

9 THE COURT: All right. Having seen the detention
10 letters on both sides, obviously, I know the government's
11 position with respect to detention here, but if there's
12 anything you want to add to the position expressed in your
13 letter, feel free to do so.

14 MS. GEDDES: Yes, Judge.

15 The government does seek a permanent order of
16 detention in this case. As set forth in our detention memo,
17 if the defendant were released, it is our position that he
18 poses both a risk of flight, a risk of danger, as well as the
19 fact that there's a serious risk that he will attempt to
20 obstruct justice. The charges include certain offenses
21 involving minors, so there is a presumption of both a risk of
22 flight and danger here. But regardless of the presumption,
23 given the defendant's lengthy and wide ranging history of
24 criminal conduct here, including obstruction, there are no
25 conditions that can overcome this presumption and mitigate the

1 risk of danger, flight, and obstruction.

2 THE COURT: Let me ask you this, because it is not
3 quite clear from the indictment and from your letter. What,
4 if any, overlap is there between this case and the other cases
5 that are in Chicago?

6 MS. GEDDES: There is no overlap with the federal
7 case. There may be some minor overlap with the state case,
8 however, there are at least four additional victims in our
9 case.

10 THE COURT: So between those cases, how many total
11 victims are alleged to have --

12 MS. GEDDES: 13.

13 THE COURT: 13, okay.

14 The other thing that I am interested in, for
15 purposes of the bail determination, is the obstruction of
16 justice allegations, not, you know, the general arguments as
17 to why obstruction is an issue, but there were some
18 allegations about actual obstruction that the defendant was
19 involved in in prior cases.

20 Can you tell me a little bit more about that.

21 MS. GEDDES: I can, Judge.

22 So with respect to the 2002 case, which the
23 defendant was acquitted of after trial in Chicago, the
24 defendant is charged in federal court in Chicago with
25 obstructing that investigation. He is charged with paying off

1 witnesses, intimidating witnesses, such that they did not
2 appear and such that they falsely testified.

3 In addition to the --

4 THE COURT: Intimidating how?

5 MS. GEDDES: Well, let me speak specifically about
6 the government's evidence in this case. The defendant had,
7 essentially, an inner circle who assisted him with a lengthy
8 attempt at obstruction by paying off witnesses who indicated
9 any interest in cooperating with law enforcement. He
10 allowed -- or he had potential witnesses write letters
11 containing false allegations that he would have at his
12 disposal to use to embarrass witnesses who potentially turned
13 against him. He told witnesses that they had the option of
14 choosing his side or the other side and made witnesses feel as
15 though if they did not -- if they were to cooperate against
16 him, they could be subject to physical harm, both themselves
17 and their family members.

18 He did this over a course of decades, and he did it
19 with many women and children. He also created numerous
20 recordings of minors and kept them at his disposal, such that
21 they were available if he wanted to release them, and that
22 served as an additional mechanism to deter witnesses from
23 cooperating with law enforcement.

24 I would also note, when he was on bail in the 2002
25 case, the defendant continued to commit crimes,

1 notwithstanding the serious charges that were pending against
2 him. In the indictment returned here in the Eastern District
3 of New York, the defendant, one of the allegations contained
4 in the racketeering charge, is kidnapping and sexual assault.

5 Those -- that conduct occurred while he was on bail.
6 So he has shown a history of not being able to comply with the
7 Court's conditions of release, and, you know, even more
8 significantly perhaps, he has engaged in this pattern of
9 obstruction by ensuring that witnesses would not be available
10 to testify and were not willing to testify.

11 THE COURT: Thank you.

12 MR. ANTON: Judge, with respect to counsel's
13 arguments, I'll start with the last one first. Counsel
14 indicates that while out on another case, he committed crimes.

15 Well, he's been alleged to commit crimes, is what's
16 being said. In fact, everything that makes up the predicate
17 for the proffer before the Court today are the allegations
18 that make up this indictment and/or -- and the superseding
19 indictment and/or the Chicago case.

20 We have to talk about whether he's a flight risk. I
21 have known Mr. Kelly for a period of time. We have gone to
22 court on a number of issues where he's been free to appear in
23 court. I have never known him not to appear in court. We do
24 not have his passport anymore, that's been turned over, so he
25 can't go anywhere out of the country, either to perform or to

1 flee the jurisdiction of this court, nor would it be his
2 intention.

3 Obstruction of justice. We are dealing with an
4 issue where there was a trial by a court, jury of his peers,
5 and a lot of eyes on that case. Not after the verdict came
6 back, not in the months or the years that followed did any of
7 these things rear their ugly head, as they do now, that there
8 was some level of obstruction of justice back then.

9 Now, along with this enterprise, which the Court
10 knows from my letter, knows my feeling on what the government
11 is calling an enterprise. When the government states he did
12 these things, I don't know if the government is saying the
13 enterprise did these things and, therefore, it is attributable
14 to him, or that he specifically would say these things.

15 There is video that allegedly exists, but we don't
16 have it before the Court nor is it indicated in the
17 superseding indictment that the video exists as evidence in
18 this case, or that video allegedly was taken of certain acts
19 alleged to be committed by the defendant.

20 Danger to others. Outside of the accusations that
21 exist here in this indictment and in the indictment in
22 Chicago, which are unproven accusations for which our client
23 has the right to remain not -- he's not convicted of. So
24 there's nothing that can point the finger at him that should
25 be used against him. Outside of allegations, we don't have

1 any obstruction of justice charge, we don't have any danger --

2 THE COURT: But because it is just an allegation, he
3 hasn't been convicted of it yet, I should just ignore it for
4 purposes of dangerousness of the defendant?

5 MR. ANTON: Definitely not. But the Court has the
6 right to require a little more than just the government say so
7 that this exists. And I ask the Court to look at the time
8 period between the alleged obstruction, the alleged danger to
9 others, the alleged issues in this case, and today, and look
10 at what's happened between that time period.

11 The allegations that are mostly contained in this
12 indictment date back some years. Only one of which Jane Doe
13 No. 5 is a more recent thing, 2017 to '18. And that issue has
14 different parts to it. But the Court certainly can require,
15 if the government is going to say obstruction took place, for
16 some level of -- a document, some level of identification of
17 obstruction rather than videos were made and there was a
18 wink-wink and a, hey, if you don't say this or say this, this
19 is going to happen. Otherwise, it is completely -- the entire
20 proffer then is based on just allegations, and not one piece
21 of evidence that this Court can rely on in taking away my
22 client's freedom and not letting him come out and cooperate
23 with counsel and be able to fully participate in his defense.

24 THE COURT: I understand that this is a separate
25 case. But when you talk about allowing your client his

1 freedom, as a practical matter, he's already in custody on
2 another case. So even if I theoretically release him on a
3 bail in this case, he is not going anywhere.

4 MR. ANTON: Without question. However,
5 Mr. Greenberg has filed a motion for reconsideration yesterday
6 in the federal matter in Chicago, and that's going to be
7 addressed hopefully within the next couple of weeks. I do
8 believe Mr. Greenberg can speak a little more intelligently
9 about this. There are overlapping issues in this case and the
10 other case. So that's another issue that would be addressed.

11 But we certainly don't want to have a situation
12 where -- we want -- we would ask this Court to make an
13 independent determination about his flight risk and about his
14 danger to society, based on -- or to others, based on the
15 presentation made by the government here, or, in our opinion,
16 lack thereof, outside of we say these things took place many
17 years after.

18 If there's jury tampering in the case, usually
19 somebody complains about it right after. But in this case,
20 there was -- not that the victim -- alleged victim or the
21 person on the tape --

22 THE COURT: I don't think there was an allegation of
23 jury tampering, was there?

24 MS. GEDDES: There's not, Judge.

25 THE COURT: There's an allegation of witness

1 tampering.

2 MR. ANTON: Witness tampering. That the witness was
3 not supposed to appear.

4 But the witness -- parents did communicate, they did
5 have communication with the parents of the witness. It is not
6 like the witness just disappeared and then surfaced years
7 later.

8 So there was communication. Prosecutor did have
9 access to the witness, and the parents, and the witness just
10 decided that they weren't going to testify because of their
11 opinion about what the video was.

12 So it is a long stretch from Mr. Kelly made a
13 witness disappear on threat of X, Y, Z. And that, I think, is
14 what's trying to be proffered here, and it just is not true.

15 And this Court, as I stated in the letter I had
16 sent, this Court has the right to ask for independent evidence
17 that can be presented to it before it denies my client his
18 ability to get out of jail. And, again, we'd like this Court
19 to make a determination here, because if Mr. Greenberg is
20 successful on that motion, we would then have to come back
21 here, and, certainly, Your Honor shouldn't be swayed one way
22 or another by what another court does, but do it independently
23 so then we can use that in the further case.

24 MR. GREENBERG: Your Honor, may I just --

25 THE COURT: Sure. I mean, look. I am going to

1 continue to consider this independently, notwithstanding the
2 fact that he's in custody on another case anyway. So if
3 that's your concern, you don't have to spend more time arguing
4 it.

5 MR. GREENBERG: No. No, that wasn't what I was
6 going to argue. But Mr. Anton, I just wanted to correct
7 something. The young lady in the prior state case did testify
8 before the grand jury that it was not her in the video. So
9 she did provide some level of cooperation. We have not gotten
10 all the discovery in that matter. We haven't gotten any, in
11 fact.

12 What I was perhaps going to suggest -- I filed this
13 motion yesterday when I was at the airport. Mr. Anton brought
14 a hard copy. I also have an additional copy of the
15 transcript, and I don't know if it would assist if I shared
16 that copy of the transcript.

17 THE COURT: Transcript of what?

18 MR. GREENBERG: Of the hearing in Chicago, the bail
19 hearing, and perhaps we took a few minutes, and the Court
20 could see the motion and reconsider, which we think -- we
21 think that the Judge -- the Judge never reached -- he said
22 that because the grand jury had found guilt, that Mr. Kelly
23 wasn't entitled to bail, and I think that was the wrong
24 analysis. He never reached the point of conditions, which
25 were recommended in Illinois. Release was actually

1 recommended by pretrial services there.

2 So I am making that offer --

3 THE COURT: You have seen the addendum. It is not
4 recommended in this district.

5 MR. GREENBERG: Right. I have seen that, just
6 before court this morning. But if that would assist --

7 THE COURT: I am happy to look at whatever you want
8 to submit, as long as you submit a copy to the other side.

9 MR. GREENBERG: Sure. Can I e-mail it? Would that
10 be okay? I only have one copy of the motion.

11 MS. GEDDES: I have your motion.

12 MR. GREENBERG: You do?

13 MS. GEDDES: Yes.

14 MR. GREENBERG: But the transcript I've got on my
15 computer, Your Honor. Unless there's some way someone can
16 print it. It is about 30 pages. It is not very long. Thank
17 you.

18 (WHEREUPON, said document was tendered to the
19 Court.)

20 (Short pause.)

21 MR. ANTON: Judge, I have one thing to add that is
22 not an allegation, but is a fact that I think the Court would
23 be concerned with. Although I wasn't a part of that earlier
24 case, it was a 2002 case that the government had referenced.
25 The case resolved itself in 2008, approximately, by way of

1 acquittal. Mr. Kelly was free on bail that entire time, never
2 fled anywhere, and he could have. He appeared at every one of
3 his court appearances. And I think that history of this
4 defendant and how he addresses the legal matters before him,
5 as well as even his most recent stint that he's been doing in
6 the Cook County case, should speak volumes of his desire to
7 address issues, appear in court every time, and his lack of
8 desire to flee any jurisdiction, but to always live up to his
9 obligations with any court, and I believe that he will do so,
10 and his history shows that he will do so in this case,
11 Your Honor. Thank you.

12 THE COURT: Anything further?

13 MR. ANTON: That's all.

14 MS. GEDDES: No, Judge.

15 THE COURT: All right. Based on what I can
16 ascertain from the various indictments, the defendant's
17 accused of a multitude of crimes spanning the time period from
18 as early as 1997 through 2018, at the latest, and they're not
19 minor charges. Many of them are incredibly serious charges of
20 sexual abuse of minors, coercion of minors, child pornography.
21 The defendant has a history of similar allegations, dating
22 back more than a decade. The defendant has access to
23 financial resources. It's not clear exactly what level of
24 financial resources, but he certainly has made a considerable
25 amount of money from his employment. He's also had frequent

1 international travel, giving him an opportunity to flee, and
2 given the serious nature of the charges against him, both in
3 this indictment and in Chicago, he has a significant incentive
4 to flee, given the long prison term that he would be subject
5 to if he's convicted of any of these offenses.

6 I'm also extremely troubled by the issues of
7 potential obstruction in prior cases and the possibility --
8 strong possibility that there could be potential witness
9 tampering in this case if he's released. And the fact that he
10 allegedly committed some of the charged offenses here while he
11 was on bail in another case strongly argues that the defendant
12 cannot be relied upon to comply with the conditions of
13 release.

14 Under the circumstances, I find that no condition or
15 combination of conditions will reasonably assure the
16 appearance of the defendant and the safety of the community.
17 So I am ordering him to be detained pending trial.

18 When's the next status conference before the
19 district judge?

20 MS. GEDDES: Today at 1:00 p.m.

21 THE COURT: If you want to appeal the decision, you
22 can certainly bring it up to the district judge at this
23 afternoon's conference.

24 MR. ANTON: Thank you.

25 THE COURT: Anything further from the other side?

1 MS. GEDDES: No, Judge. Thank you.

2 MR. ANTON: Thank you, Your Honor.

3 THE COURT: Thanks, everyone.

4 (WHEREUPON, at 10:57 a.m. the proceedings were
5 concluded.)

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REPORTER'S CERTIFICATE

11

12 I, ANNETTE M. MONTALVO, do hereby certify that the
13 above and foregoing constitutes a true and accurate transcript
14 of my stenographic notes and is a full, true and complete
15 transcript of the proceedings to the best of my ability.

16 Dated this 29th day of August, 2019.

17 /s/Annette M. Montalvo
18 Annette M. Montalvo, CSR, RDR, CRR
19 Official Court Reporter
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